
FOREIGN INVESTOR PRIMER – National Institute of Industrial Property (INPI)

Introduction

The National Institute of Industrial Property (INPI) is the official government body responsible for Industrial Property rights in Brazil being a federal autarchy of the Ministry of Industry, Foreign Trade and Services. INPI's duties include:

1. [Trademarks registration](#)
2. [Patent grants](#)
3. [Technology Transfer and Franchising Contracts registration](#)
4. [Industrial Designs registration](#)
5. [Geographical Indications registration](#)
6. [Software registration](#)
7. [Topography of Integrated Circuits registration](#)

The legislation that regulates the Industrial Property in Brazil is the Industrial Property Law 9,279 of 1996, the Software Law 9,609 of 1998 and the Law 11,484 of 2007 related to Topography of Integrated Circuits.

For additional information, please contact our Coordination of International Relations, by e-mail coint@inpi.gov.br.

THE SERVICES OF INPI

Trademarks

Industry, trade and services sectors find in INPI the support needed for trademark registration, an exclusive task of the Directorate for Trademarks, Industrial Designs and Geographical Indications (DIRMA).

The registration at INPI guarantees accessing legal protection in Brazil for trademarks. It is important to emphasize that, once granted, a trademark registration remains in force for ten years and this period can be extended for successive equal periods indefinitely, as long as there is an interest in maintaining the trademark ownership.

Only individuals or enterprises performing lawfully and effectively an activity compatible with the product or service intended by the trademark registration can have such register granted. Regarding foreign applicants, it is necessary to have a Foreign Personal Representative established in Brazil.

You should also note further trademark registration conditions. In Brazil, the Industrial Property Law regulates all the aspects of trademark rights, including what can be registered as a trademark or not. It is recommended to consult article 124 of the IP Law in order to identify all the prohibitions.

Besides being registrable, a trademark has also to be available. In Brazil, the first to file an application defined who has the right to the registration, excluding the exceptions mentioned in the Law. Should the sign chosen by you to identify your product or service be already registered at INPI under the same classification intended to your product or service, in principle, it would not be available to you. In that sense a previous search at INPI's database, although not mandatory, is important to the success of your application. Whether you use our website or request a formal search by INPI's analysts, a previous search should help you build confidence regarding the originality of your trademark, besides providing you access to previous decisions by INPI related to the relevant trademarks. This analysis is called examination on absolute and relative grounds for refusal.

If the trademark is available and your product or service is compatible, you can move onto the next step, to determine the trademark's nature and form of presentation. Regarding its nature, it can be defined as either a product, a service, a certification or a collective mark. Concerning the form of presentation, the trademarks can be nominative, mixed, figurative or three-dimensional. It is essential to know exactly what your trademark is for and the form of presentation it will have because the type of protection requested will vary according to such indications.

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Patents

One of the most notable ways to protect the results of research and development efforts is through patenting, where the State grants its applicant the temporary ownership of an invention. During the patent's term, its title owner has the right to exclude third-party actions related to the protected subject such as manufacture, commercialization, use and others. To protect an invention through patenting means to prevent its unauthorized exploitation by competitors who were not involved in nor bore the invention's research and development costs.

A Patent Certificate is one of the most used instruments of protection in scientific and technological innovation to assure its holder the prospect of financial returns for its Research and Development (R&D). Patents allow for the exclusive commercialization of new products and industrial processes related to the registered invention.

In Brazil, a Patent Application is kept secret from its filing date (or earlier priority used as reference) until the end of an 18-month period, when the application is published at our *Industrial Property Gazette* (often referred to as RPI).

For the application to be examined by a Patent Examiner, it is necessary to file an examination request and collect the respective fees. Examination shall be requested within 36 months of the filing date of the patent application, otherwise the application shall be deemed withdrawn. Patent applications may be withdrawn, granted or denied. In the cases where the decision to grant a patent is published in the RPI, the Brazilian IP Law requires the applicant to pay a Patent Certificate expedition fee within 60 days of the decision publication (and present the proof of payment), under penalty of definitive withdrawn of the application.

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Other registers

INPI also deals with other assets related to the intellectual property, which will be explained below.

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Registration of licensing of Industrial Property, Technology Transfer and Franchising Contracts

INPI shall register the contracts involving technology transfer, franchising and licensing of industrial property rights (patent, industrial design and trademark), according to the Brazilian Law.

The contractual arrangements registered at INPI are licensing of patents, industrial designs and trademarks, acquisition of technology, technical assistance services and franchising.

The effect of the registered contracts at INPI is: a) fiscal deduction; b) payment abroad related to the royalties; c) effective with regard to third parties.

The contracts of Patent Licensing (EP), Industrial Design Licensing (EDI) and Trademark Licensing (UM) present the licensing of industrial property rights (patent, industrial design and trademark) filed and/or granted by INPI.

The contracts of technology transfer registered by INPI are Scientific and Technical Assistance Services (SAT) and Technology Acquisition (FT). These arrangements of contracts are not based on industrial property rights.

The contracts of Technology Acquisition (FT) aim to acquire tacit knowledge (know how) and techniques for the production of industrial goods and services.

The contracts of Scientific and Technical Assistance Services (SAT) stipulate the conditions for obtaining techniques, planning, training and scheduling methods, as well as researches, studies and projects for the implementation or provision of specialized services.

The services registered by INPI are related to promote the technology transfer to develop the portfolio of products of the company, when it is accompanied by a Brazilian technician or when it is producing some sort of document, like a report.

Franchising is a business model that includes any system in which a franchisor licenses to a franchisee the right to use a trademark and/or a patent, along with the right to distribute products or services on an exclusive or semi-exclusive basis, possibly including the right to use technology or operating system for the business establishment and management, in

exchange for a compensation based on trademark and/or patent, according to the Brazilian Law 8955/1994.

Franchising contracts are intended for temporary granting of rights related to the use of trademarks, provision of technical assistance services combined or not with other modalities of technology transfer.

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Industrial Designs

The registration of Industrial Designs protects the external ornamental shape of an object or the set of lines and colors applied to a product, as long as it presents a new and original result and is suitable for industrial production. The registration of Industrial Designs does not protect functionalities, dimensions, materials or the manufactured processes of an object.

The initial term of the protection is 10 years, which can be extended for up to 3 periods of five years, totalizing a maximum of 25 years. For such, beside the initial registration fees, a five-year extension fees must be met from the tenth year onwards.

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Geographical Indications

A Geographical Indication is an Industrial Property asset characterized by the identification of a product or service related to the place, region or country of origin, where such a region has a reputation related to the product or service and/or the region is positively affected by specific regional characteristics, like natural factors (*terroir*) and/or the traditional expertise of this location.

The current regulation on geographical indication does not establish a fixed term to this form of protection, which is valid as long as legal conditions are met, and it guarantees right to the exclusive use of the geographical name to the products established in a specific place represented by an association or legal entity representative of the community. The

current framework comprises two kinds of geographical indications, namely: Indication of Source (often referred to as IP) and Appellation of Origin (often referred to as DO). For both it is possible to request a nominative, graphic or mixed (graphic and nominative) registration.

An Indication of Source is used for products or services in which the geographical region became known as a production center for such products and services. An Appellation of Origin is used when natural factors and traditional expertise in the geographical region guarantees certain characteristics or qualities to the product or service produced inside of its borders.

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Software

Software in Brazil is protected by copyright as they are considered a literary work. This protection covers the literal aspects of the software, which is to say, its source or object code. It is important to mention that the Brazilian copyright law does not protect technical and functional aspects of a code, although there are no restrictions on protecting it by means of other industrial property registrations. In Brazil, Software Registration is optional since the intellectual right emerges from the work itself.

Unlike other countries that use only copyright law to protect software, in Brazil there is a specific act on the protection of software, known as the Software Act. Regarding unspecified aspects in the Software Act, what is established by Copyright Law must be observed.

The term for Software protection in Brazil is 50 years as from January 1st of the subsequent year of the creation or publication of the program. Software can be kept in secret and only be disclosed by court order or by request of the owner of such right.

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Topography of Integrated Circuits

The protection of topography of integrated circuits is a matter foreseen by the Law 11,484 of May 31st 2007. When filing an application, images of the topography are required. Those can be presented by the means of drawings, photographs and in optical digital media, as long as it allows for the exact identification and characterization of the integrated system's originality. The term of such right is 10 years from the filing date or the date of the first economic exploitation of the topography in Brazil or abroad, whichever happens first.

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